

**BEA GENERAL PROVISIONS
FOR
ACQUISITION OF COMMERCIAL ITEMS/SERVICES**

SECTION A APPLIES REGARDLESS OF PRICE

A. 1 GENERAL

- 1.1 The terms and conditions of these General Provisions and those set forth in the BEA purchase order (Order) or subcontract (terms used interchangeably) constitute the entire agreement between the parties and apply notwithstanding any different or additional terms and conditions submitted or proposed by Seller; and BEA objects to and shall not be bound by any such additional or different terms and conditions. Seller must determine what provisions should be inserted in its Lower-tier subcontracts and purchase orders to implement the obligations of Seller to BEA. By entering into this Order, Seller recognizes these obligations and agrees to implement them in its lower-tier subcontracts and purchase orders.

Provisions herein that must be inserted into Subcontractor's Lower-tier subcontracts and purchase orders, with value thresholds if any, are denoted in **bold-face** print. Nevertheless, Subcontractor ultimately remains responsible to determine what provisions need to be passed down to lower-tier subcontractors.

- 1.2 The failure of either party to enforce at any time any of the provisions of this Subcontract or to require at any time performance by the other party of any of such provisions shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of this Subcontract or any parts thereof, or the right of either party thereafter to enforce each and every provision.
- 1.3 In the event of an inconsistency between provisions of this Subcontract, the inconsistency shall be resolved by giving precedence as follows: (i) Purchase Order or Subcontract; (ii) statement of work; (iii) these General Provisions; and (iv) other provisions of this Subcontract, whether incorporated by reference or otherwise. However, Subcontractor shall notify the Contractor prior to performing work based on resolution of an inconsistency by the order of precedence set forth herein.
- 1.4 All articles incorporated by reference are incorporated as if set forth in their entirety and are those in effect on the date of this Order. For such articles the following definitions apply:
- a. "Contractor" means Subcontractor
 - b. "Subcontractor" means Subcontractor's Lower-tier Subcontractor
 - c. "Contract" means this Purchase Order or Subcontract
 - d. "Contracting Officer" means Contractor's Procurement Agent
 - e. "Government" means Contractor
 - f. "DOE" means the U.S. Department of Energy

A. 2 THE FOLLOWING CLAUSES ARE INCORPORATED BY REFERENCE INTO A SUBCONTRACT VALUED AS INDICATED IN THE BULLETED SUBHEADINGS HEREUNDER:

- **In all subcontracts regardless of value:**

2.1 FAR 52.223-3 Hazardous Material Identification and Material Safety Data

2.2 FAR 52.225-3 Buy-American Act – Free Trade Agreements-Israeli Trade Act

- 2.3 FAR 52.225-5 Trade Agreements
- 2.4 FAR 52.225-13 Restrictions on Certain Foreign Purchases
- 2.5 FAR 52.242-15 Stop Work Order
- 2.6 FAR 52.222-21 Prohibition of Segregated Facilities
- 2.7 FAR 52.222-26 Equal Opportunity
- 2.8 FAR 52.247-64 Preference for Privately Owned U.S. – Flag Commercial Vessels
- 2.9 FAR 52.249-2 Termination for Convenience
- 2.10 FAR 52.244-6 Subcontracts for Commercial Items and Commercial Components
- At a value greater than \$10,000
 - 2.11 FAR 52.222-36 Affirmative Action for Workers with Disabilities >\$10,000
- At a value equal to or greater than \$25,000
 - 2.12 FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era and other Eligible Veterans >\$25,000
 - 2.13 FAR 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans and other Eligible Veterans >\$25,000
- At a value greater than \$100,000
 - 2.14 FAR 52.203-7 Anti-Kickback Procedures >\$100,000
 - 2.15 FAR 52.219-8 Utilization of Small Business Concerns
 - 2.16 FAR 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees
- At a value greater than \$500,000
 - 2.17 FAR 52.219-9 Small Business Subcontracting Plan >\$500,000, except reporting at all tiers, shall be in accordance with the U.S. DOE's internet-based Electronic Subcontract Reporting System (eSRS)

A. 3 DEFINITIONS

As used throughout this Order, except in articles incorporated by reference and where otherwise indicated, the following definitions apply:

"Government" means the United States of America or any duly authorized representative thereof;

"DOE" means the U.S. Department of Energy;

"Subcontractor" and "Seller" mean the business entity contracted to provide the materials, supplies or services covered by this Order;

"Contractor" means Battelle Energy Alliance, LLC (BEA) or its duly authorized representative;

“Contracting Officer” means the Contractor’s designated Procurement Agent and procurement management personnel;

“Lower-tier Subcontractor” means any party entering into an agreement with the Subcontractor or any other party who has entered into a contract with the Subcontractor, for the furnishing of supplies or services required for performance of this Order; and

“INL” means Idaho National Laboratory;

“Work” means the performance of the Subcontractor pursuant to the requirements, terms, and conditions of this Order.

A. 4 CHANGES

Changes in the terms and conditions of this Order may be made only by written agreement of the parties.

A. 5 MATERIALS AND WORKMANSHIP

5.1 New Materials.

Unless otherwise specifically approved by the Contractor, the Subcontractor warrants that all equipment, materials, or products, including those components, parts, and materials which are permanently installed into systems, subsystems, and/or assemblies, shall be new and of the grade/type specified by this Order. No mixed manufacturers', or manufacturing production, lots will be accepted. All workmanship shall be performed in a skillful and workmanlike manner consistent with the stated requirements and other applicable criteria of this Order.

5.2 Suspect/Counterfeit Materials

Types of material, parts, and components known to have been misrepresented include (but are not limited to) fasteners; hoisting, rigging, and lifting equipment; cranes; hoists; valves; pipe and fittings; electrical equipment and devices; plate, bar, shapes, channel members, and other heat treated materials and structural items; welding rod and electrodes; and computer memory modules. The Subcontractor's warranty also extends to labels and/or trademarks or logos affixed, or designed to be affixed, to items supplied or delivered to the Contractor. In addition, because falsification of information or documentation may constitute criminal conduct, the Contractor may reject and retain such information or items, at no cost, and identify, segregate, and report such information or activities to cognizant DOE officials.

The following materials furnished under this Order will be used in a U.S. Government-owned facility and shall be manufactured domestically, i.e., within the United States of America:

For Fastener acquisitions, Domestic Origin is defined as the United States of America and Canada.

Fasteners

All Fasteners shall comply with the Fastener Quality Act, PUBLIC LAW 101-592-NOV. 16, 1990 104 STAT. Fasteners delivered to a DOE facility are not authorized to take the exemption as listed in Section 6 of the Act, "... except that such term does not include any screw, nut, bolt, stud, or load-indicating washer that is..." subsections 6A through and including 6G of the Act.

Fasteners shall exhibit grade marks and the manufacturer's identification symbol (Head Mark) as specified in the referenced Material Specification. All High Strength fasteners 1/4" and above in diameter bolts, studs, cap screws, and high-strength washers, and nuts received under this Order, shall exhibit both grade marks and the manufacturer's identification symbol (Headmark). Mixed lots and fasteners without Head Markings, or with Head Markings identified on the DOE Headmark List, are prohibited. Information and instruction regarding the DOE Headmark List and the INL suspect/counterfeit issues and controls is available from

the INL external home page at URL:

<http://www.inl.gov/procurement/forms.shtml>.

From this web site, link to the Subcontractors Requirements Manual (SRM) and select RD-5008, Control of Purchased Items. Refer to Appendix "D".

Definition: High strength fastener products specified by standards include, but are not limited to, ASTM A 193, 194, 325, 354, 437, 449, 454, 490, 540, 563, 564, 574, 593, 687, and ASTM A 837; SAE J 104, SAE J429 (SAE Grade 5, 8, 8.2); and All ASTM/SAE Fasteners with 80K Tensile Strength or higher.

NOTE: ASTM A449, Type 1 is 90K for 1 3/4" to 3".

Electrical Items

Electrical items shall exhibit manufacturers' labels and identification as specified in this Order.

Mechanical Items

Mechanical items shall exhibit manufacturers' labels and identification as specified in this Order.

- 5.3 Evidence of deliberate misrepresentation of any item(s) and/or component(s) and/or material(s) provided under this Order may result in an investigation to determine the validity-of-certification, fraud, and/or forgery.**

A. 6 APPROVALS

The granting of approvals by the Contractor of any data submitted by Subcontractor under this Order shall not affect, or relieve Subcontractor from, compliance with this Order.

A. 7 PASSAGE OF TITLE AND LIENS

- 7.1 Title to deliverables shall pass at the place of delivery to Contractor. If purchased F.O.B. origin, delivery to the carrier shall be deemed to be delivery to Contractor.
- 7.2 Seller agrees to furnish deliverables free and clear of all liens, claims, and encumbrances. Seller agrees to hold Contractor and the Government harmless from all liens, claims, or demands in connection with the Work.

A. 8 DELIVERY AND PAYMENT

- 8.1 Unless otherwise specified in this Order, a separate invoice shall be issued upon each delivery of Supplies or completion of Services, and shall be payable by Contractor upon receipt of Supplies or completion of Services and receipt by Contractor of a correct invoice therefore. Credit and discount periods shall be computed from the date such invoice is received to the date Contractor's check is mailed. Unless freight and other charges are itemized, the discount will be taken on the full amount of invoice.
- 8.2 The Contractor will not accept price adders for the cost of providing insurance against risk of loss in transit. If the Subcontractor chooses to insure its risk of loss in transit, the cost of same must be included in the order price. The Contractor is self-insured as to its risk of loss in transit and there is no authorization to the Subcontractor to procure any insurance against that risk for the account of the Contractor.

A. 9 INSPECTION

- 9.1 Seller shall perform, or have performed, all inspections and tests necessary to substantiate that the Supplies or Services furnished under this Order conform to Order requirements, including any applicable technical requirements for specified manufacturers' parts.

- 9.2 Contractor has the right either to reject or to require correction of nonconforming Supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with Order requirements. Contractor may reject nonconforming Supplies with or without disposition instructions.
- 9.3 Rejection of non-conforming work shall be made as promptly as practicable after delivery, except as otherwise provided in this Order; but Contractor's failure to inspect or reject work shall neither relieve Subcontractor from responsibility for work that is not in accordance with the Order requirements nor impose liability upon the Contractor.
- 9.4 Inspections and tests by Contractor do not relieve Seller of responsibility for defects or other failures to meet Order requirements.

A.10 ASSIGNMENT

Neither this Order nor any interest herein nor claim hereunder shall be assigned or transferred by the Subcontractor, except as expressly authorized in writing by the Contractor. This Order may be assigned by the Contractor to the U.S. DOE or to DOE's designee(s).

A. 11 FEDERAL, STATE, AND LOCAL TAXES

Except as otherwise provided in this Order, the order prices include all applicable federal, state, and local taxes and duties. The Contractor is exempt under Idaho law from the payment of certain Idaho sales or use taxes and is authorized by agreement with the State of Idaho department of revenue and taxation to pay directly to the State of Idaho any sales or use taxes owing on purchases of tangible personal property. Therefore, billing under this Order shall not include Idaho sales or use tax for any tangible personal property purchased hereunder.

A.12 COMPLIANCE WITH LAWS

Subcontractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this Order is performed.

A. 13 DISPUTES

- 13.1 The parties agree that the appropriate forum for resolution of any dispute pertaining to this Subcontract shall be a court of competent jurisdiction as follows:
 - a. Subject to paragraph 13.1 b. of this Article, any such litigation shall be brought and prosecuted exclusively in Federal District Court; with venue in the United States District Court for the District of Idaho in Pocatello, Idaho.
 - b. Provided, however, that in the event that the requirements for jurisdiction in the Federal District Court for the District of Idaho, in Pocatello, Idaho are not present, such litigation shall be brought exclusively in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville, with venue in Idaho Falls, Idaho.
- 13.2 Any substantive issue of law in dispute shall be determined in accordance with the law of the State of Idaho, except an issue involving a Federal Acquisition Regulation or Department of Energy Acquisition Regulation clause(s), which shall be determined in accordance with federal procurement law. Nothing in this Article shall grant to the Subcontractor by implication any statutory rights or remedies not expressly set forth in this Order.
- 13.3 There shall be no interruption in the prosecution of the Work, and the Subcontractor shall proceed diligently with the performance of this Order pending final resolution of any dispute, claim, or litigation, arising under, or related to, this Order, between the parties hereto or between the Subcontractor and Lower-tier Subcontractors or suppliers.
- 13.4 The Contract Disputes Act of 1978 (41 U.S.C. Sections 601-613) shall not apply to this Order; provided,

however, nothing in this Article shall prohibit BEA, at its sole discretion, from sponsoring a claim of the Subcontractor for resolution under the provisions of its prime contract with DOE. In the event that BEA sponsors a claim at the request of the Subcontractor, the Subcontractor shall be bound by the decision of the cognizant DOE Contracting Officer to the same extent and in the same manner as BEA.

A. 14 DEFAULT

- 14.1 Contractor may, subject to Paragraphs 14.3 and 14.4 of this Article, by written notice of default to Seller, terminate this Order in whole or in part if Seller fails to: (i) deliver the Supplies or to perform the Services within the time specified in this Order or any extension; (ii) make progress, so as to endanger performance of this Order (see subdivision 14.2 of this Article); or (iii) perform any of the other provisions of this Order (see subdivision 14.2 of this Article).
- 14.2 Contractor's right to terminate this Subcontract under subdivisions 14.1(ii) and 14.1(iii) of this Article, may be exercised if Subcontractor does not cure such failure within ten days (or more if authorized in writing by Contractor) after receipt of the notice from Contractor specifying the failure.
- 14.3 If Contractor terminates this Order in whole or in part, it may acquire, under the terms and in the manner Contractor considers appropriate, supplies or services similar to those terminated, and Seller shall be liable to Contractor for any excess costs for those supplies or services. However, Seller shall perform the work not terminated.
- 14.4 Except for defaults of lower-tier Subcontractors at any tier, Seller shall not be liable for any excess costs if the failure to perform this Order arises from causes beyond the control and without the fault or negligence of Seller. Examples of such causes include: acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; and unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of Seller.
- 14.5 If the failure to perform is caused by the default of a Lower-tier Subcontractor at any tier, and if the cause of the default is beyond the control of both Seller and the Lower tier Subcontractor and without the fault or negligence of either, Seller shall not be liable for any excess costs for failure to perform, unless the required supplies or services were obtainable from another source(s) in sufficient time for Seller to meet the required delivery schedule.
- 14.6 If this Order is terminated for default, Contractor may require Seller to transfer title to the Government and deliver to Contractor, as directed by Contractor, any (1) completed Supplies, and (2) partially completed Supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this Article) that Seller has specifically produced or acquired for the terminated portion of this Order. Upon direction of Contractor, Seller shall also protect and preserve property in its possession in which Contractor or the Government has an interest.
- 14.7 Contractor shall pay the order price for conforming Supplies delivered. Seller and Contractor shall agree on the amount of payment for manufacturing materials delivered and for the protection and preservation of the property. Failure to agree will be a dispute under the "Disputes" article. Contractor may withhold from these amounts any sum it determines to be necessary to protect itself against loss because of outstanding liens or claims of former lien holders.
- 14.8 If, after termination, it is determined that Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Contractor.
- 14.9 The rights and remedies of Contractor in this Article are in addition to any other rights and remedies provided by law or under this Order.

A. 15 WARRANTY

- 15.1 Contractor warrants that the supplies shall be free from defects in material and workmanship, of the most suitable grade of their respective kinds for the purpose, and comply with all requirements set forth in this Order, until one year after first placed into service by Contractor, or three years after acceptance, whichever first occurs. Subcontractor shall correct any nonconformity with this warranty at its sole expense, as directed by Contractor, by promptly (i) repairing or replacing the nonconforming supplies specified (and correcting any plans, specifications, or drawings affected); (ii) furnishing Contractor any materials, parts, and instructions necessary to correct or have corrected the nonconformity, or (iii) paying to Contractor a portion of the order price as is equitable under the circumstances.
- Subcontractor shall, in any event, bear all packing, packaging, and shipping costs to the Subcontractor's plant and return, and shall bear all risk of loss or damage, for the repaired or replacement supplies during transit.
- 15.2 If Subcontractor fails to perform its obligations promptly under this Article, Contractor may perform, or have performed, such obligations and Subcontractor shall pay Contractor all charges occasioned thereby.
- 15.3 The warranty with respect to replacement supplies or services shall be the same as the warranty provided for in Paragraphs 15.1 and 15.2 of this Article. The warranty for other than replacement supplies or services shall continue until the expiration of the original period plus a period equal to the time elapsed between the discovery of the nonconformity and its correction.
- 15.4 Unless installation is an element of the work, Subcontractor shall not be obligated under this Article for the costs of removal or reinstallation of any supplies furnished or items serviced hereunder from the location of their installation, or for the costs of removal or reinstallation of structural parts or items not furnished by Seller hereunder.

A. 16 AUTHORIZATION AND CONSENT

- 16.1 The Government hereby gives its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture in the performance of this Order, or any part hereof, or any amendment hereto, or any Lower-tier Subcontract hereunder, of any invention described in and covered by a patent of the United States, and that is:
- a. embodied in the structure or composition of any article the delivery of which is accepted by the Government under this Subcontract, or
 - b. utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Subcontractor. or the using Lower-tier Subcontractor, with (i) specifications or written provisions now or hereafter forming a part of this Subcontract, or (ii) specific written instructions given by the Contractor directing the manner of performance.
- 16.2 The entire liability to the Government and the Contractor for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this Subcontract, or any Lower-tier Subcontract hereunder, and the Government assumes liability for all other infringement to the extent of the authorization and consent herein granted.

A. 17 INTELLECTUAL PROPERTY INDEMNITY

- 17.1 Subcontractor shall indemnify the Government and Contractor and their officers, agents, and employees against liability, including costs, for infringement of any copyright or United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy order under 35 U.S.C. 181) arising out of the manufacture or delivery of Supplies, the performance of Services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this Subcontract, or out of the use or disposal by or for the account of the Government or Contractor of such Supplies or construction work.
- 17.2 This indemnity shall not apply unless Subcontractor shall have been informed as soon as practicable by the

Government or Contractor of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to: (i) an infringement resulting from compliance with specific written instructions of Contractor directing a change in the Supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of this Subcontract not normally used by Subcontractor; (ii) an infringement resulting from addition to or change in Supplies furnished or construction work performed that was made subsequent to delivery or performance or; (iii) a claimed infringement that is unreasonably settled without the consent of Contractor, unless required by final decree of a court of competent jurisdiction.

A. 18 RIGHTS IN DATA

18.1 Definitions.

- a. Computer databases, as used in this Article, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.**
- b. Computer Software, as used in this Article, means:**
 - (i) computer programs that are data comprising a series of instructions, rules routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and**
 - (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer databases.**
- c. Data, as used in this Article, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. For the purposes of this Article, the term does not include data incidental to the administration of this Subcontract, such as financial, administrative, cost and pricing, or management information.**
- d. Form, fit, and function data, as used in this Article, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.**
- e. Limited rights data, as used in this Article, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice, if included in this Article.**
- f. Restricted computer software, as used in this Article, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice, if included in this Article.**
- g. Technical data, as used in this Article, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer database.**
- h. Unlimited rights, as used in this Article, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means,**

and for any purpose whatsoever, and to have or permit others to do so.

18.2 Allocation of rights.

- a. Except as provided in Paragraph 18.3 of this Article regarding copyright, the Government shall have unlimited rights in:
 - (i) Data first produced in the performance of this Subcontract;
 - (ii) Form, fit, and function data delivered under this Subcontract;
 - (iii) Data delivered under this Subcontract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this Subcontract; and
 - (iv) All other data delivered under this Subcontract, unless provided otherwise for limited rights data or restricted computer software in accordance with Paragraph 18.7 of this Article.
- b. The Subcontractor shall have the right to:
 - (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Subcontractor in the performance of this Subcontract, unless provided otherwise in Paragraph 18.4 of this Article;
 - (ii) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in Paragraph 18.7 of this Article;
 - (iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with Paragraphs 18.5 and 18.6 of this Article; and
Establish claim to copyright subsisting in data first produced in the performance of this Subcontract to the extent provided in subparagraph 18.3.a of this Article.

18.3 Copyright.

- a. Data first produced in the performance of this Subcontract. Unless provided otherwise in Paragraph 18.4 of this Article, the Subcontractor may establish, without prior approval of the Contractor or Department of Energy (DOE), claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this Subcontract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, expressly written permission of the DOE Contracting Officer, through the Contractor, is required to establish claim to copyright subsisting in all other data first produced in the performance of this Subcontract. When claim to copyright is made, the Subcontractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including subcontract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Subcontractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Subcontractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.
- b. Data not first produced in the performance of this Subcontract. The Subcontractor shall not, without prior written permission of the DOE Contracting Officer, through the Contractor, incorporate in data delivered under this Subcontract any data not first produced in the performance of this Subcontract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Subcontractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph 18.3.a of this Article; provided,

however, that if such data are computer software the Government shall acquire a copyright license as set forth in Paragraph 18.7 of this Article, or as otherwise may be provided in a collateral agreement incorporated in or made part of this Subcontract.

- c. Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this Paragraph 18.3, and to include such notices on all reproductions of the data.

18.4 Release, publication, and use of data.

- a. The Subcontractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Subcontractor in the performance of this Subcontract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this Paragraph 18.4 of this Article or expressly set forth in this Subcontract.
- b. The Subcontractor agrees that to the extent it receives or is given access to data necessary for the performance of this Subcontract which contain restrictive markings, the Subcontractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the DOE Contracting Officer, through the Contractor.
- c. The Subcontractor agrees not to assert copyright in computer software first produced in the performance of this Subcontract without prior written permission of the DOE Patent Counsel assisting the subcontracting activity. When such permission is granted, the Patent Counsel shall specify appropriate terms, conditions and submission requirements to assure utilization, dissemination, and commercialization of the data. The Subcontractor, when requested, shall promptly deliver to Patent Counsel a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled.

18.5 Unauthorized marking of data.

- a. Notwithstanding any other provisions of this Subcontract concerning inspection or acceptance, if any data delivered under this Subcontract are marked with restrictive or limiting markings not authorized by this Subcontract, the Contractor with DOE approval may at any time either return the data to the Subcontractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings:
 - (i) The Contractor, in coordination with DOE, shall make written inquiry to the Subcontractor affording the Subcontractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
 - (ii) If the Subcontractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contractor, in coordination with DOE, for a good cause shown), the Government, and Contractor, shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions;
 - (iii) If the Subcontractor provides written justification to substantiate the propriety of the markings within the period set in subparagraph 18.5.a.(i) of this Article, the Contractor, in coordination with DOE, shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the DOE Contracting Officer determines that the markings are authorized, the Subcontractor shall be notified in writing. If the Contractor determines, with concurrence of the DOE Contracting Officer, that the markings are not authorized, the Contractor shall furnish the Subcontractor a written determination, which determination shall become the final decision regarding the appropriateness of the markings, unless the Subcontractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contractor's decision. The Contractor and DOE shall continue to abide by the markings under this

subparagraph 18.5.a.(iii) until final resolution of the matter either by the Contractor's determination becoming final (in which instance the Government and the Contractor shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

- b. The time limits in the procedures set forth in subparagraph 18.5.a of this Article may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.
- c. This Paragraph 18.5 does not apply if this Subcontract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title In of the Federal Property and Administrative services Act of 1949.
- d. Except to the extent the Contractor's action occurs as the result of the final disposition of the matter by a court competent jurisdiction, the Subcontractor is not precluded by this Paragraph 18.5 from bringing a claim pursuant to the Disputes Article of this Subcontract, as applicable, that may arise as the result of the Contractor removing or ignoring authorized markings on data delivered under this Subcontract.

18.6 Omitted or incorrect marking.

- a. Data delivered to the Contractor without either the limited rights or restricted rights notice as authorized by Paragraph 18.7 of this Article, or the copyright notice required by Paragraph 18.3 of this Article, shall be deemed to have been furnished with unlimited rights, and the Government and Contractor assume no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Subcontractor may request, within six (6) months (or a longer time approved by the Contractor for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Subcontractor's expense, and the Contractor, in coordination with DOE, may agree to do so if the Subcontractor:
 - (i) Identifies the data to which the omitted notice is to be applied;
 - (ii) Demonstrates that the omission of the notice was inadvertent;
 - (iii) Establishes that the use of the proposed notice is authorized; and
 - (iv) Acknowledges that the Government and the Contractor have no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.
- b. The Contractor, in coordination with DOE, may also:
 - (i) Permit correction at the Subcontractor's expense of incorrect notices if the Subcontractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or
 - (ii) Correct any incorrect notices.

18.7 Protection of limited rights data and restricted computer software.

- a. When data other than that listed in subparagraphs 18.2.a. (i), (ii), and (iii) of this Article are specified to be delivered under this Subcontract and qualify as either limited rights data or restricted computer software, if the Subcontractor desires to continue protection of such data, the Subcontractor shall withhold such data and not furnish them to the Contractor under this Subcontract. As a condition to this withholding, the Subcontractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer database for delivery to the Contractor are to be treated as limited rights data and not restricted computer software.

- b. Notwithstanding subsection 18.7.a. of this Article, the contract may identify and specify the delivery of limited rights data, or Contractor's Subcontract Administrator may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Subcontractor may affix the following "Limited Rights Notice" to the data and the Contractor will thereafter treat the data, subject to the provisions of sections 18.5 and 18.6 of this Article, in accordance with such Notice:

LIMITED RIGHTS NOTICE

- (a) These data are submitted with limited rights under Contract No. _____ between _____ (Subcontractor) and Battelle Energy Alliance, LLC (Contractor), acting in its capacity as a Management and Operating Contractor to the U.S. Department of Energy at the Idaho National Laboratory. These data may be reproduced and used by the Government and Contractor with the express limitation that they will not, without written permission of the Subcontractor, be used for purposes of manufacture nor disclosed outside the Government or Contractor; except that the Government or Contractor may disclose these data outside the Government or Contractor for the following purposes, if any; provided that the Government and Contractor make such disclosure subject to prohibition against further use and disclose:

- (1) use (except for manufacture) by support services contractors or subcontractors within the scope of their contracts or subcontracts;
- (2) this "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (3) this "limited rights data" may be disclosed to other contractors or subcontractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts or subcontracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (4) this "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (5) release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

- b. This Notice shall be marked on any reproduction of these data, in whole or in part.

18.8 Subcontracting.

The Subcontractor has the responsibility to obtain from its Lower-tier Subcontractors all data and rights therein necessary to fulfill the Subcontractor's obligations under this Subcontract. If a Lower-tier Subcontractor refuses to accept terms affording the Government and the Contractor such rights, the Subcontractor shall promptly bring such refusal to the attention of the Contractor and not proceed with the lower-tier subcontract award without written authorization by the Contractor.

18.9 Relationship to patents.

Nothing contained in this Article shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

18.10 Inspection.

The Subcontractor agrees, except as may be otherwise specified in this Subcontract for specific data items listed as not subject to this paragraph, that the DOE Contracting Officer or an authorized representative may, up to three (3) years after acceptance of all items to be delivered under this Subcontract, inspect at Subcontractor's facility any data withheld pursuant to Paragraph 18.7 of this Article for purposes of verifying Subcontractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Subcontractor whose data are to be inspected demonstrates to the DOE Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the DOE Contracting Officer shall designate an alternate inspector.

A. 19 ADDITIONAL TECHNICAL DATA REQUIREMENTS

- 19.1 In addition to the technical data specified elsewhere in this Subcontract to be delivered, the Contractor may at any time during this Subcontract performance or within one year after final payment call for Subcontractor to deliver any technical data first produced or specifically used in the performance of this Subcontract, except technical data pertaining to items of standard commercial design.
- 19.2 The provisions of the Rights in Data Article included in this Subcontract are applicable to all technical data called for under this Additional Technical Data Requirements Article. Accordingly, nothing contained in this Article shall require Subcontractor to actually deliver any technical data, the delivery of which is excused by the Article entitled Rights in Data.

When technical data are to be delivered under this Article, Subcontractor will be compensated for appropriate costs for converting such data into the prescribed form for reproduction and for delivery.

SECTION B APPLIES WHEN SERVICES ARE TO BE PROVIDED BY SUBCONTRACTOR, REGARDLESS OF PRICE

B. 1 A. 9 INSPECTION, is amended to include:

- 9.5 If any of the Services do not conform with Order requirements, Contractor may require Subcontractor to perform the Services again in conformity with Order requirements, at no increase in Order amount. When the defects in Services cannot be corrected by re-performance, Contractor may (i) require Subcontractor to take necessary action to ensure that future performance conforms to Order requirements and (ii) reduce the Order price to reflect the reduced value of the Services performed.

B. 2 A. 15 WARRANTY, is amended to include:

- 15.5 Subcontractor warrants that the Services shall reflect the highest standards of professional knowledge and judgment, shall be free from defects in workmanship, and shall be in compliance with all requirements of this Order, until one year from the completion of the Services. Subcontractor shall correct any nonconformity with this warranty at its sole expense, as directed by Contractor, by promptly (i) reperforming the nonconforming Services or (ii) paying to Contractor a portion of the order price as is equitable under the circumstances.

SECTION C APPLIES WHEN SERVICES ARE TO BE PROVIDED BY SUBCONTRACTOR AT PREMISES OWNED, LEASED OR CONTROLLED BY CONTRACTOR OR DOE, REGARDLESS OF PRICE

C.1 INCORPORATED BY REFERENCE:

FAR 52.237-2 Protection of Government, Buildings, Equipment and Vegetation

DEAR 952.203-70 Whistleblower Protection for Subcontractor Employees

C. 2 OCCURRENCE NOTIFICATION AND REPORTING BY SUBCONTRACTOR

Subcontractor shall report to Contractor any unusual occurrence or unplanned event occurring within the boundaries of the Contractor's facilities during the performance of this Order. The report shall be provided, either orally or in writing, to the designated Contractor Procurement Agent or Technical Representative. Occurrences/events which require reporting include any out-of-the-ordinary situations which occur. A list (Form PROC 1861) of situations that require reporting will be provided to Subcontractor by Contractor prior to Subcontractor's arrival on site. The list is not all-inclusive, but provides necessary guidance.

C. 3 ENVIRONMENTAL, SAFETY AND HEALTH

- 1. The environmental, safety and health (ES&H) requirements established by this Subcontract shall not relieve Subcontractor from complying with more stringent laws and regulations issued by a Federal, State or Local agency, as well as any manufacturer's instructions.**
- 2. Subcontractor shall protect the safety and health of employees, of members of the public, and any other persons, and shall comply with all applicable safety and health regulations and requirements (including reporting requirements) of Contractor. Contractor shall notify Subcontractor, in writing, of any noncompliance with the provisions of this Article and the immediate corrective action to be taken.**
- 3. Contractor reserves the right to have removed from the site and deny re-entry to any Subcontractor employee (including supervision and management):**
 - a) Found to be in a situation of imminent danger to life and health created by violating procedures covering fall protection, confined space entry and work, or lockout/tagout requirements, respiratory protection, and excavations, where injury could occur;**
 - b) Advising an employee to work in an unsafe condition/position; or**
 - c) Willfully violating any ES&H policy, procedure, rule or regulation.**
- 4. If Subcontractor's superintendent/management knowingly places an employee (including himself) in an imminent danger situation, this Subcontract may be terminated for default.**

C.4 COMPLIANCE, PERMITS, AND INDEMNIFICATION

THIS ARTICLE SUPERSEDES ARTICLE A.12, COMPLIANCE WITH LAWS

- 1. At its expense, Subcontractor shall comply with all federal, state, county, and municipal laws, ordinances, and regulations applicable to the work to be performed under this Subcontract. Subcontractor shall secure all required licenses and permits prior to commencing the Work.**
- 2. Subcontractor shall indemnify and hold harmless the Government, the Contractor (Battelle Energy Alliance, LLC), and each of their respective officers, directors, employees, agents, and successors in interest from and against all liability, claims, suits, damages, losses, costs, fines, civil penalties, remediation, corrective action or other response action costs, and any associated expense (including, without limitation,**

costs of: (i) defense; (ii) settlement; (iii) reasonable attorneys fees; and (iv) costs incurred in enforcing this indemnification) arising out of or in connection with any of the following attributable to the conduct of Subcontractor, its lower-tier subcontractors, or their respective employees, agents, or representatives:

- a. Injury or death of persons or damage to property;
 - b. Contamination of, or adverse effects on, the environment;
 - c. Subcontractor's failure to comply with all applicable laws, ordinances, or regulations or to secure and/or comply with licenses or permits required to perform the Work including, without limitation, violations, or alleged violations, of the following federal laws and any state or federal implementing laws or regulations:
 - i. Clean Water Act as amended, 33 U.S.C.A., Section 1251 et seq. (including, but not limited to, liability for fines incurred by the indemnified parties for Subcontractor's violations of the Construction Storm Water Discharge Regulations or Requirements);
 - ii. Comprehensive Environmental Response Compensation and Recovery Act as amended, 42 U.S.C. Section 9601 et seq.;
 - iii. Resource Conservation and Recovery Act as amended, 42 U.S.C., Section 6901 et seq.;
 - iv. Clean Air Act as amended, 42 U.S.C. Section 7401 et seq.;
 - v. Toxic Substances Control Act as amended, 15 U.S.C.A. 2601 et seq.;
 - vi. Atomic Energy Act as amended (including, but not limited to, DOE orders and ALARA requirements), 42 U.S.C.A. 2014 et seq.; and
 - vii. Sections 234A, 234B, and 234C (42 U.S.C. Sections 2282a, 2282b, and 2282c) of the Atomic Energy Act, including, but not limited to, applicable nuclear and industrial/construction safety regulations, requirements or orders.
 - d. Subcontractor's generation and management of, or arranging the transportation, treatment, storage, or disposal of, waste generated at the INL at a treatment, storage, or disposal facility or other location that has not been approved in writing by the Contractor;
 - e. Loss of fee suffered by Contractor under its prime contract with DOE;
 - f. Any claim maintained in tort against the Government or Contractor for negligence or otherwise concerning any injury or death of a Subcontractor employee or lower-tier subcontractor employee which was, or could have been, the basis for a statutory worker's compensation claim. To make the indemnity under this subparagraph fully effective, Subcontractor hereby expressly waives the exclusive remedy and indemnity limitation under the Idaho Worker's Compensation Law of Title 72 of the Idaho Code or under any other applicable state or federal worker's compensation law; and
 - g. Costs incurred by Contractor under applicable Federal Acquisition Regulation and/or Department of Energy Acquisition Regulation provisions addressing Costs Related to Legal and Other Proceedings.
3. Nothing in the foregoing indemnification of the Government and Contractor by Subcontractor shall be construed to indemnify or save harmless the Government or Contractor from any liability arising out of, or resulting from, a nuclear incident or solely as a result of negligence of the Government or Contractor.
4. Subcontractor shall procure or cause to be procured, at its expense, and likewise shall maintain, or cause to be maintained, during performance of the Work, and for such period thereafter as may be necessary under the circumstances, insurance sufficient to protect the Subcontractor, Contractor, Contractor's subcontractors, and the US DOE against all liability with respect to bodily injury or death, or property loss or damage which may be imposed by law upon Subcontractor or which is assumed by Subcontractor under this Subcontract. Such insurance shall be written on an "occurrence" basis and shall be with a company or companies with an AM Best rating of "A" or better and in such forms as are satisfactory to Contractor. At a minimum, Subcontractor shall maintain the following insurance coverages and limits under this Article:

- a. Commercial General Liability**
 - i. Each Occurrence: \$1 Million**
 - ii. Fire Damage (any one fire): \$100,000**
 - iii. Medical Expense (any one person): \$5,000**
 - iv. Personal and Advertising Injury: \$1 Million**
 - v. General Aggregate: \$2 Million**
 - vi. Products/Completed Operations Aggregate: \$2 Million**
 - b. Automobile Liability**
 - i. Combined Single Limit (each accident): \$1 Million**
 - c. Worker Compensation and Employer Liability**
 - i. Worker Compensation: Statutory Limits**
 - ii. Employer Liability (each accident): \$100,000**
 - iii. Employer Liability Disease/Each Employee: \$100,000**
 - iv. Employer Liability Disease/Policy Limit: \$500,000**
 - d. Asbestos Liability (if the Work includes any asbestos-related work, i.e., inspection, handling, removal, or other)**
 - i. Per Occurrence/Annual Aggregate: \$2 Million**
- 5. Subcontractor's insurance policies shall be endorsed to include:**
- a. "Battelle Energy Alliance, LLC and its successors in interest" and the "US Department of Energy" named as additional insured parties for all coverage specified in this Article, including Worker Compensation and Employer Liability.**
 - b. Waiver of subrogation in favor of Battelle Energy Alliance, LLC and its successors in interest and the US Department of Energy.**
 - c. Subcontractor's insurance is primary.**
 - d. Thirty days prior written notice to the Contractor in the event of any coverage cancellation.**
- 6. A certificate(s) of insurance shall be furnished to the Contractor's SA upon the earlier of either ten calendar days after award of this Subcontract or before Subcontractor begins any work under this Subcontract on Contractor-controlled property or facilities. Each certificate of insurance shall include the endorsements required by Paragraph 5 of this Article and shall be signed by an authorized representative of the insurance company who must indicate the capacity in which he/she is signing. Separate certificates shall be provided by each insurance company providing coverage to the Subcontractor.**
- 7. Subcontractor's procurement, maintenance, limits, or coverage of any insurance policies, whether or not approved by Contractor, shall not relieve Subcontractor from any liability assumed pursuant to this Article.**
- 8. Failure by Subcontractor to comply with the insurance requirements of this Article, including timely submittal of properly executed certificates, is a basis for termination under the Article entitled Default, of these General Provisions.**
- 9. Subcontractor shall include all the requirements of this Article, including the specifically required insurance coverage, in all lower-tier subcontracts under this Subcontract that require work on Government-owned premises. Subcontractor shall obtain appropriate certificates of insurance from said lower-tier**

subcontractors, maintain the certificates on file, and make the certificates available to the Contractor upon request.

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